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John Murray

From: Doug Halley
Sent: Friday, March 26, 2004 9:55 AM
To: John Murray
Cc: Don Johnson
Subject: FW: Acton/Board of Health: Request for Betterment Waiver

CHRIS -
1) PLACE IN 3/26 MAIL
2) PUT ON 4/7 PRE-TOWN
MTG. AGENDA UNDER
SEWER COMM. BUSINESS.

Below please find Town Counsel's response to the Fort Pond Brook Place for a waiver of betterments on the affordable units. Please note the implications regarding W. R. Grace (it should be noted that Lou Levine's Office calls me weekly regarding when final assessments will be issued. I can only assume that they ask that information in terms of future litigation). I have sent the request up to your office asking for direction. Please let me know how you would like me to proceed.

-----Original Message-----

From: Stephen Anderson
Sent: Friday, March 26, 2004 9:47 AM
To: Doug Halley
Cc: Douglas Wilkins
Subject: RE:Acton/Board of Health: Request for Betterment Waiver

Doug:

Doug Wilkins and I think you are right that there is no authority to grant the requested relief.

1. G.L. c. 83 s. 14 says that "a person who enters his particular drain into a main drain or common sewer . . . shall pay to the town a PROPORTIONAL PART of the charge of making and repairing the same . . ." To allow someone to pay less than his proportional share is not consistent with the statute.
2. The Acton sewer bylaw does not provide for a waiver or partial abatement. We are not aware that regulations have been adopted under the bylaw, but they probably couldn't authorize a waiver in any event.
3. You cite G.L. c. 83 s. 17, which allows payment for the permanent privilege of using the sewer. It authorizes the "town" to determine that this approach is acceptable, so we assume that this means town meeting. To be sure, the "reasonable amount" for the privilege is to be determined by the "sewer commissioners, selectmen or road commissioners." It would be hard to implement this prior to final assessments.
4. Although G.L. c. 83 s. 16E allows an abatement of charges, we do not believe that it applies prior to a tax lien (see s. 16A et seq) or a final assessment, which would be abated under c. 80 (see G.L. c. 83, § 15B). We see no claim here that the assessment exceeds the benefit to the property, so we doubt that an abatement is the avenue for the type of relief sought here (even if the Town wanted to go down that road).

The developer or the condo association (if applicable) could assume the cost for the affordable units. The town cannot spread that cost onto others in the sewer district. (Grace would have a field day with this.)

Steve

-----Original Message-----

From: Doug Halley [mailto:dhalley@acton-ma.gov]
Sent: Thursday, March 25, 2004 3:24 PM
To: Stephen D. Anderson
Subject: Request for Betterment Waiver

Attached please find a request we have received regarding a betterment waiver and my review of the applicable sections of the Bylaw and MGL relating to the request. Could you please review and advise

3/26/2004

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INTERDEPARTMENTAL COMMUNICATION

Acton Board of Health - Telephone 978-264-9634 - Fax 978-264-9630

March 26, 2004

TO: Don Johnson, Town Manager

FROM: Doug Halley, Health Director

SUBJECT: Fort Pond Brook Place

Attached please find a request from Fort Pond Brook Place to have the betterments waived for the two affordable units proposed for that development. I have forwarded this information along with the sewer assessment bylaw to Town Counsel and requested his input on the legalities of granting waivers from betterments. Please let me know how you would like to proceed with this request. Thanks.

Fort Pond Brook Place

68 River Street, LLC

Mr. Douglas Healy
Health Director
Town of Acton

March 23, 2004

Dear Doug,

As you are aware, Glen Kaufmann and I are well into the process of applying for approval for a Comprehensive Permit for development of 68 River Street, which we're calling Fort Pond Brook Place. It is a 4-structure, 8 unit development. Each unit will have 3 bedrooms and 2 ½ baths and will be connected to the town sewer system. The project is being filed as a 40B, Local Initiative Petition (LIP). Last night we presented our project to the Board of Selectmen and were pleased that they voted to authorize the Chairman to sign a letter of support.

Two of the units will be affordable. According to the state prescribed formulas we are entitled to charge \$195,000 for each unit. We have agreed to reduce this to \$187,000 to make it more affordable. A goal of the Acton Community Housing Corporation is to allow families with 60% or \$49,613 of the average median income (AMI) in the area to purchase these units. In order to meet this goal a variety of strategies must be considered.

We are seeking your support for a proposal to waive the sewer betterment fee for these units. As you suggested, we would like to present our case before the Sewer Commission.

To achieve the 60% of AMI goal a combination of actions are required. The most important is a waiver of the sewer betterment charge for the affordable units only. We propose reducing the selling price of the affordable units by the amount of the betterment or, approximately \$15,000. If this is done the income required to support the purchase price would decline from \$57,300 [at \$187,000) to \$53,062 or 62.4% of AMI (at \$172,000), nearly reaching our goal.

Complementing this action is the use of the "Soft Second Loan Program" offered by the state to qualifying first time home buyers. The program not only reduces the mortgage interest rate a full percentage point, it also structures a second mortgage so that principal mortgage insurance (PMI) is not required. This is a significant savings. These two elements have a major effect on further lowering the income level required by purchasers.

The combination of the sewer betterment waiver and the Soft Second loan program makes families with incomes below 60% of AMI eligible for significant energy reducing incentive programs offered by local utilities. Two programs exist that target affordable units only – Nstar' Low Income New Construction Program and Energy Star certification.

Nstar appropriates funds for specific projects (We have applied.). The funds are disbursed for upgrades to standard construction plans in areas like more efficient furnaces and appliances,

They even will purchase new Energy Star certified refrigerators for the buyer. The buyer would have to purchase it in the absence of this program.

The second program, Energy Star, is a program financed by a number of utilities. It encourages builders to meet their energy efficiency targets through rebate incentives. The program complements the Nstar program. Over and above the elements applying to all new construction there are additional incentives for the affordable units. These focus on lighting and, in some cases, upgrades in furnaces, hot water systems and air conditioning. In order to participate in either program an income at or below 60% of AMI is required.

A third, as yet not fully investigated program is the “Energy Efficiency Mortgage” program. We understand that it reduces the income requirements for a given purchase price by taking the lower monthly energy expenses into account.

Conclusion:

As you can see, a sewer betterment waiver has a cascading effect on a series of opportunities to lower the income eligibility and carrying costs to purchase an affordable unit. A target group important to the ACHC is public employees. One of the units will be designated for a family with an Acton connection including town and school employees. Lowering the income level will dramatically increase the opportunities for these and other local residents to qualify.

We have committed to the ACHC that any waiver amount authorized will result in a dollar-for-dollar reduction in the purchase price of the unit. A full waiver will allow buyers to take advantage of significant additional cost reduction strategies that, in the absence of this waiver, would not be possible.

We hope to receive your support for this proposal and seek your guidance in the next steps to be taken. Please contact me should you have any questions. I will contact you later this week to follow-up on this with you.

Sincerely,

Paul Gaboury
978-618-1729

Glen Kaufmann